



UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

CHARLES KLASKY,

Defendant.

CR No. 17-

17 CR 00401

I N F O R M A T I O N

[18 U.S.C. § 371: Conspiracy]

[UNDER SEAL]

The Acting United States Attorney charges:

[18 U.S.C. § 371]

A. INTRODUCTORY ALLEGATIONS

At all times relevant to this Information:

Lap-Band Surgery and Bariatric Coverage

1. Lap-Band surgery (also known as bariatric surgery) was an elective weight-loss procedure that employed the Lap-Band, a restricted device, regulated by the United States Food and Drug Administration.

2. Lap-Band surgery was intended for use only in morbidly obese adult patients who met specific criteria based on their body mass index ("BMI"), had failed more conservative weight-reduction

1 alternatives, and committed to making various permanent changes in
2 their eating habits.

3 3. If a patient had bariatric coverage through their
4 insurance, the insurance company typically required that the Lap-Band
5 surgery be pre-approved before providers could bill and obtain
6 payment for the surgery and related pre-operative and post-operative
7 services and procedures. Patients with bariatric coverage would
8 generally be pre-approved and the Lap-Band surgery deemed medically
9 necessary if, among other requirements, they either had a BMI of 40
10 or more, or a BMI of 35 or more and at least one co-morbidity, such
11 as obstructive sleep apnea ("OSA"), typically diagnosed through a
12 sleep study.

13 4. In order to obtain pre-approval for Lap-Band surgery, the
14 medical provider would have typically submitted a pre-authorization
15 request (also known as a letter of medical necessity or "LOMN") that
16 established the medical necessity for the Lap-Band procedure with
17 documentation showing that the patient was morbidly obese and met all
18 the additional qualifications of the particular plan, including
19 documentation of any co-morbidity.

20 5. If an insurance company knew that a LOMN and/or attached
21 supporting documentation contained false or fraudulent statements
22 purporting to support the medical necessity for the Lap-Band
23 procedure, it would not cover any claims submitted for the Lap-Band
24 and related services for that patient.

25 Sleep Studies

26 6. A polysomnography ("PSG") was a baseline sleep study
27 ordered by a licensed physician based on an individualized assessment
28

1 of a patient's risk for a sleep disorder. A PSG was typically billed
2 to insurance under common procedural terminology ("CPT") code 95810.

3 7. If, based on the PSG results, the licensed physician
4 interpreting the PSG diagnosed the patient with OSA and prescribed
5 treatment using a continuous positive airway pressure ("CPAP")
6 machine, a titration study, also known as a "CPAP" study, could have
7 been conducted to find the appropriate pressure for use in treating
8 the OSA using the CPAP. The titration study was billed to insurance
9 under CPT code 95811.

10 8. Sleep studies such as PSGs and titration studies generated
11 raw data that was typically scored by a Registered Polysomnographic
12 Sleep Technician ("RPSGT"). As part of that scoring, the RPSGT
13 calculated the apnea-hypopnea index ("AHI"), a score related to the
14 number of breathing cessations (apneas) and drops in the breathing
15 rate accompanied by oxygen desaturation (hypopneas) that occurred in
16 the study. An AHI of less than 5 was normal, while an AHI between 5
17 and 14.9 reflected mild OSA, between 15 and 29.9 reflected moderate
18 OSA, and 30 or higher reflected severe OSA.

19 9. The sleep study would then be interpreted by a qualified
20 licensed physician, who would have used the sleep study results to
21 arrive at diagnoses and treatment recommendations specific to the
22 patient's results.

23 10. Most insurance companies require a diagnosis of moderate or
24 severe OSA to qualify as a co-morbidity that would support a request
25 for Lap-Band pre-approval.

26 GET THIN and the GET THIN Sleep Study Program

27 11. "GET THIN" referred to a network of entities – including
28 Independent Medical Services, Inc. ("IMS"); Surgery Center

1 Management, LLC ("SCM"); and Medical Payment Processing, LLC ("MPP"),
2 among others – that worked to promote, perform, and submit insurance
3 claims for Lap-Band surgeries and other medical procedures, including
4 sleep studies, in the Central District of California, and elsewhere,
5 between at least in or around 2008 and at least in or around June
6 2016.

7 12. GET THIN was controlled by Co-Conspirator 1 ("CC-1") and
8 others, who: (a) set and reviewed GET THIN's policies and procedures,
9 including policies and procedures with respect to the services GET
10 THIN would provide, the billing for those services, and materials
11 submitted to insurance companies; (b) reviewed individual patient
12 files and claims for services submitted to insurance carriers; and
13 (c) approved GET THIN expenses.

14 13. Beginning in or around January 2010 and continuing to at
15 least in or around December 2015, GET THIN maintained a sleep study
16 program ("SSP") to conduct sleep studies for patients who came to GET
17 THIN seeking Lap-Band surgery.

18 14. Between in or around May 2010 and in or around December
19 2015, defendant CHARLES KLASKY ("KLASKY"), who was not a licensed
20 medical professional, was the manager of the SSP.

21 15. The SSP conducted both PSG and titration studies in
22 multiple locations in California, including locations in Apple
23 Valley, Long Beach, Palmdale, San Bernardino, and West Hills, all in
24 the Central District of California.

25 16. The SSP employed a Registered Polysomnographic Sleep
26 Technician ("RPSGT"), to score manually the raw data from the sleep
27 study tests.

1 17. The SSP also employed a "Sleep Specialist," Co-Conspirator
2 2 ("CC-2"), who was a licensed physician, to review and interpret the
3 scored sleep studies.

4 18. The SSP also paid Co-Conspirator 3 ("CC-3"), who was not a
5 medical professional and who was employed by GET THIN in its
6 nutrition department, to assist defendant KLASKY in altering or
7 "formatting" the sleep study reports ("SSRs").

8 B. OBJECT OF THE CONSPIRACY

9 19. Between in or around May 2010 and in or around December
10 2015, in Los Angeles County, within the Central District of
11 California, and elsewhere, defendant KLASKY, CC-1, CC-2, CC-3, and
12 others known and unknown to the Acting United States Attorney,
13 knowingly combined, conspired, and agreed to commit health care
14 fraud, in violation of Title 18, United States Code, Section 1347.

15 C. MANNER AND MEANS OF THE CONSPIRACY

16 20. The object of the conspiracy was carried out, and to be
17 carried out, in substance, as follows:

18 a. According to GET THIN policies set by CC-1 and others,
19 GET THIN employees would routinely schedule patients for one or more
20 sleep studies, irrespective of medical need, in an effort to uncover
21 a co-morbidity that would assist GET THIN in obtaining insurance
22 approval for Lap-Band surgery from various health care benefit
23 programs.

24 b. After the sleep studies had been conducted and scored
25 by an RPSGT, at defendant KLASKY's direction, the RPSGT would input
26 those scores into a SSR template created by defendant KLASKY that
27 included the electronic signature of CC-2 and standardized diagnoses
28 and treatment options that were not individualized to the patient.

1 c. Acting at CC-1's direction and knowing that CC-2 would
2 either not review the SSR or would review it without reference to the
3 raw data from the sleep study, defendant KLASKY would then alter, or
4 instruct others including CC-3 to alter, the sleep study results in
5 the SSR, falsifying the AHI and other test data in them to make it
6 appear as though the patients had OSA when they, in fact, did not, or
7 to make it appear as though they had more severe OSA than they, in
8 fact, had.

9 d. Defendant KLASKY falsified other aspects of the SSRs
10 as well – including a patient's weight and score on the Epworth
11 Sleepiness Scale, a test designed to evaluate a patient's risk for
12 daytime sleepiness and sleep apnea – in order to make the patients
13 more likely to receive insurance pre-approval for Lap-Band surgery.

14 e. Defendant KLASKY falsified the SSRs, knowing and
15 intending that (i) those falsified SSRs would be provided to
16 insurance companies – often attached to an LOMN that also referenced
17 the falsified sleep study results – as part of GET THIN's request for
18 pre-authorization for Lap-Band surgery and (ii) the insurance
19 companies would rely on the falsified SSRs and corresponding
20 inaccurate LOMN statements regarding the sleep study results in
21 making decisions regarding Lap-Band pre-approval.

22 f. As defendant KLASKY well knew, once insurance pre-
23 approvals were obtained, based in part on the fraudulent information
24 in the SSRs altered by defendant KLASKY and others acting at his and
25 CC-1's direction, GET THIN would perform Lap-Band surgery on the
26 patients, submit claims for services associated with that Lap-Band
27 surgery, and receive payment from insurance companies for those
28 claims.

1 g. Defendant KLASKY would seek approval from CC-1 for
2 payments to individuals instrumental in committing this fraud,
3 including CC-2 and CC-3. In particular, defendant KLASKY would
4 authorize and seek CC-1's approval for payments to CC-3 for
5 fabricating SSRs. Defendant KLASKY would also authorize and seek CC-
6 1's approval for payments to CC-2, which, although ostensibly for CC-
7 2's review and interpretation of sleep studies, were intended by
8 defendant KLASKY and CC-1 to ensure CC-2's continued participation in
9 the conspiracy, including CC-2's permission to use his electronic
10 signature on SSRs he did not review or interpret.

11 21. GET THIN billed insurance companies and health care benefit
12 programs at least approximately \$159,637,716 for Lap-Band surgeries
13 for patients for whom SSRs had been falsified to reflect that the
14 patients suffered from OSA or more severe OSA than the patients, in
15 fact, had. Insurance companies and health care benefit programs paid
16 at least approximately \$17,895,974 on those claims.

17 D. OVERT ACTS

18 22. On or about the following dates, in furtherance of the
19 conspiracy and to accomplish its object, defendant KLASKY, together
20 with CC-1, CC-2, CC-3, and others known and unknown to the Acting
21 United States Attorney, committed and willfully caused to be
22 committed, the following overt acts, among others, in the Central
23 District of California and elsewhere:

24 Overt Act No. 1: On or about March 18, 2012, defendant KLASKY
25 approved an invoice authorizing payment of \$570 to CC-3 for "pre-
26 formatting," that is, fabricating, approximately 57 SSRs.


27 Overt Act No. 2: Between on or about April 14, 2012, and on
28 or about January 23, 2014, CC-1 caused GET THIN to submit

1 approximately \$169,814 in claims to Blue Cross Blue Shield for
2 services related to a Lap-Band surgery performed on or about March
3 22, 2012 on K.H., for whom, on or about February 22, 2012, defendant
4 KLASKY falsified or caused to be falsified an SSR, increasing the AHI
5 score contained in that SSR from 2.2 (normal) to 21.2 (moderate OSA).

6 Overt Act No. 3: On or about October 5, 2012, based on CC-1's
7 authorization, defendant KLASKY sought payment to CC-2 in the amount
8 of \$9,550.

9 Overt Act No. 4: Between on or about May 16, 2012, and on or
10 about February 6, 2013, CC-1 caused GET THIN to submit approximately
11 \$144,655 in claims to UnitedHealthcare for services related to Lap-
12 Band surgery performed on or about November 14, 2011 on P.M., for
13 whom, on or about June 2, 2011, defendant KLASKY falsified or caused
14 to be falsified an SSR, increasing the AHI score contained in the SSR
15 from 21.7 (moderate OSA) to 32.1 (severe OSA).

16
17 SANDRA R. BROWN
18 Acting United States Attorney

19
20 
21 LAWRENCE S. MIDDLETON
22 Assistant United States Attorney
23 Chief, Criminal Division

24 GEORGE S. CARDONA
25 Assistant United States Attorney
26 Chief, Major Frauds Section

27 KRISTEN A. WILLIAMS
28 KIMBERLY D. JAIMEZ
Assistant United States Attorneys
Major Frauds Section